

## Client Services Policy Manual

Policy Number: **RE-07**  
Subject: **Undue Hardship**  
Chapter: **Return to Work and Rehabilitation**

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### Policy Statement

An employer with a re-employment obligation shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances with respect to a specific accommodation.

In order to claim the undue hardship defence, the employer who is responsible for making the accommodation has the onus of proof. It is not up to the injured worker or WorkplaceNL to prove that the accommodation can be accomplished without undue hardship.

When referencing any of the return to work policies (RE-01 to RE-11 and RE-18), it is important to recognize the responsibilities of the workplace parties within the context of the complete return to work process. Therefore, the whole return to work model must be considered in its entirety and not only the specific guidelines under an individual policy.

### Deciding Whether Undue Hardship Exists

Where a claim of undue hardship is made WorkplaceNL will conduct an investigation. The investigation will be as detailed as necessary and will include interviews with the workplace parties.

### Factors for Consideration

The following factors shall be taken into account in making a determination on undue hardship:

- i. the health and safety of the worker or co-workers;
- ii. the nature and cost of the accommodation needed;
- iii. the overall financial resources of the employer making the reasonable accommodation;
- iv. the number of persons employed by the employer;
- v. the effect on expenses and resources of the employer;
- vi. the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- vii. the type of operation of the employer, including the structure and functions of the employer's workforce;

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- viii. the geographic relationship between the worker's current employment and that of the proposed accommodation offered by the employer;
- ix. the impact of the accommodation on the employer's operations; and
- x. other relevant factors.

This policy recognizes that different businesses have different financial and operational circumstances. What may be an "undue cost" for one business may not be undue for another one.

### Excluded Factors

Matters such as business inconvenience, employee morale, customer preferences, or the operation of collective agreements will not be considered relevant in an undue hardship defence.

#### **Business Inconvenience**

Business inconvenience in and of itself is not a defence to the accommodation obligation. If there are demonstrable costs attributable to decreased productivity, efficiency or effectiveness, they can be taken into account in assessing undue hardship under the cost standard, providing they are quantifiable and demonstrably related to the proposed accommodation.

#### **Employee Morale**

In some cases, accommodating an injured worker may generate negative reactions from co-workers who are either unaware of the reason for the accommodation obligation or who believe that the worker is receiving an undue benefit. Such reactions cannot be used as an undue hardship defence.

#### **Customer Preferences**

An employer cannot claim undue hardship based on customer (or employee) preferences, fears or prejudices toward an individual's disability.

#### **Collective Agreements or Contracts**

Collective agreements or other contractual arrangements cannot act as a barrier to providing re-employment accommodation. The Courts have determined that collective agreements and contracts must give way to the requirements of human rights law.

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### **Exceptional Circumstances**

In cases where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or unintended result, WorkplaceNL will decide the case based on its individual merits and justice. Such a decision will be considered for that specific case only and will not be precedent setting.

**Reference:** *Workplace Health Safety and Compensation Act (the Act), Section 89.1*  
*Canadian Human Rights Act*  
*Newfoundland Human Rights Code*  
*Policies: RE-01 through RE-11*  
*RE-18 Hierarchy of Return to Work and Accommodation*

### **Amendment History**

<i>Original Effective Date</i>	2002 01 01
<i>Revision #1</i>	2004 07 22